

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

PEOPLE OF THE STATE OF CALIFORNIA ex rel.  
Rob Bonta, Attorney General of California,

Plaintiff-Appellant,

v.

MIGUEL A. CARDONA, in his official capacity as  
Secretary of Education, and UNITED STATES  
DEPARTMENT OF EDUCATION,

Defendants-Appellees.

No. 21-16980

**THE PEOPLE OF THE STATE OF CALIFORNIA’S  
UNOPPOSED MOTION TO STAY APPEAL**

The People of the State of California respectfully request that the Court extend its stay of this appeal an additional 60 days, through January 29, 2024. California has conferred with opposing counsel, who does not oppose this relief.

On March 24, 2022, the Court granted California’s unopposed motion to stay this appeal through November 2022 [Dkt. No. 16] and thereafter extended the stay twice, through November 2023 [Dkt. Nos. 18, 20]. As explained in the prior unopposed motions, the United States Department of Education (ED) was in the midst of rulemaking that, when complete, would either moot this appeal or otherwise significantly impact it. [*E.g.*, Dkt. No. 15.]

On October 10, 2023, ED published final regulations “related to gainful employment (GE) to address ongoing concerns about educational programs

designed to prepare students for gainful employment in a recognized occupation,” with an effective date of July 1, 2024. 88 Fed. Reg. 70,004–193.

In light of this development, California requests an additional 60 days to consider these new regulations and their impact on this appeal. ED does not oppose the relief sought.

This case arose out of two rulemakings initiated by ED over the last decade related to the “gainful employment” (GE) mandate of the Higher Education Act of 1965 (HEA), 20 U.S.C. § 1070 *et seq.* In 2014, ED published final regulations interpreting the HEA’s GE mandate. 79 Fed. Reg. 64,890 (Oct. 31, 2014). Following a change in presidential administrations, ED rescinded its 2014 regulations in their entirety, without replacement (Rescission Rule). 84 Fed. Reg. 31,392 (July 1, 2019).

On March 18, 2020, California filed the underlying action (N.D. Cal. No. 20-01889) challenging the Rescission Rule under the Administrative Procedure Act, 5 U.S.C. §§ 701–706. California’s case was ordered related to *American Federation of Teachers v. DeVos* (N.D. Cal. No. 20-00455), which also challenged the Rescission Rule.<sup>1</sup> ED moved to dismiss California’s complaint for lack of standing. [Dkt. No. 18, N.D. Cal. No. 20-01889.] Initially, the district court denied ED’s motion in part, allowing California’s action to proceed. *Am. Fed’n of Tchrs.*

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<sup>1</sup> The district court has been holding the related case in abeyance pending ED’s GE rulemaking. *See, e.g.*, Order (June 27, 2023) [Dkt. No. 81, N.D. Cal. No. 20-00455]. In light of ED’s publication of new, final GE regulations, ED and the plaintiffs in that case have requested that the district court continue to hold the case in abeyance through at least January 18, 2024. [Dkt. No. 82, N.D. Cal. No. 20-00455].

*v. DeVos*, 484 F. Supp. 3d 731, 750 (N.D. Cal. 2020). But after ED moved for reconsideration, the district court dismissed California’s complaint with prejudice. *Am. Fed’n of Tchrs. v. Cardona*, No. 20-00455, 2021 WL 4461187, at \*6 (N.D. Cal. Sept. 29, 2021). California timely appealed on November 23, 2021.

Shortly after California filed this appeal, ED initiated the regulatory process to promulgate new regulations once again addressing the HEA’s GE mandate. At the request of the parties, the Court stayed this appeal first to November 2022 [Dkt. No. 16], then to April 2023 [Dkt. No. 18], and finally through November 2023 [Dkt. No. 20], pending ED’s rulemaking.

On October 10, 2023, ED published new, final GE regulations in the Federal Register, 88 Fed. Reg. 70,004–193, which amend and supersede the challenged Rescission Rule.<sup>2</sup> The new GE regulations are effective on July 1, 2024. *Id.* In light of the issuance of these new regulations, a further, short stay is necessary to consider their impact on this appeal.

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<sup>2</sup> See also ED’s September 27, 2023 press release, “Biden-Harris Administration Announces Landmark Final Rules to Protect Consumers from Unaffordable Student Debt and Increase Transparency,” <http://archive.ph/skKuH>.

Accordingly, California respectfully moves unopposed to extend the stay of this appeal an additional 60 days, through January 29, 2024.

Dated: November 29, 2023

Respectfully submitted,

/s/ Bernard A. Eskandari

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### **CERTIFICATE OF COMPLIANCE**

I certify that this motion complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 726 words.

/s/ Bernard A. Eskandari

BERNARD A. ESKANDARI